DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.351.215 license fee schedule for weighing and measuring devices	) NOTICE OF AMENDMENT))

TO: All Concerned Persons

1. On June 1, 2006, the Department of Labor and Industry (department) published MAR Notice No. 24-351-190 regarding the proposed amendment of the above-stated rule at page 1356 of the 2006 Montana Administrative Register, issue no. 11.

2. On June 22, 2006, a public hearing was held on the proposed amendment of the above-stated rule in Helena. Several comments were received by the June 30, 2006, deadline.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

<u>COMMENT 1</u>: One commenter asked why propane (LPG) meters are not included in the same fee schedule as the retail motor fuel devices, and why fees for LPG devices are higher than those for the other devices.

<u>RESPONSE 1</u>: The department notes that the fee schedule for retail and wholesale gasoline and diesel fuels is based on the maximum flow rate of the device. Because the device must be tested at maximum flow rate for a minimum of one minute, the flow rate dictates the size of the volumetric prover required for the test. The costs of these volumetric provers are dependent upon their size. For example, a retail gasoline pump requires the use of a five gallon test measure which costs approximately $400.00 and is used to test around a thousand pumps a year with each test taking about 10 –15 minutes. By comparison, a wholesale meter will require a 100-gallon prover costing around $1,500 each, plus the price of the trailer needed to transport to prover. This device will be used to test approximately 200 to 300 meters a year, with each test taking about 45 minutes. From this example, it is obvious that it costs less to test a retail device compared to a wholesale device. Because the fees must be commensurate with associated costs, the license fee for a wholesale device is greater than that for a retail device. LPG device fees are the same regardless of flow rate because the costs associated with testing are allocated evenly for all meters and are higher because of the equipment cost and time needed to perform the test. While the department does test LPG using two different sized provers based somewhat on flow rates, these two provers are generally sold as a single proving unit mounted on a trailer. A new LPG proving unit will cost in excess of $45,000, and will be used to test approximately 250 meters a year, with each meter taking between 45 and 60 minutes.

COMMENT 2: A few commenters suggested privatizing the inspection process to the fuel companies.

RESPONSE 2: The department notes that other states have attempted to privatize weights and measures functions, but these functions have always reverted back to public agencies. When testing and certifying weighing and measuring devices, the Weights and Measures Bureau (W&M) acts as an independent third party whose only concern is equity. Passing this function to an entity whose interests may also include increased gasoline sales would not provide the same level of confidence and impartiality that is provided by W&M. An additional consideration is the level and cost of service provided to all businesses throughout the state. The W&M currently tests and inspects every meter on an annual basis for a set fee, regardless of location. In conjunction with the inspection process, W&M will often adjust meters to bring them back into tolerance. If this function were transferred to a private entity, the cost may decrease for those businesses located within an area having a large population of devices, but for those located a greater distance from the service provider in less densely populated areas, the cost will likely increase. The department has determined that weights and measures functions should remain with a public entity to provide the best service at the least cost for all businesses involved as well as the greatest confidence in accurate devices.

COMMENT 3: A few comments were made on the differences in device fees and frequency of inspections between Montana and surrounding states.

RESPONSE 3: The department notes that comparing the device fees charged by Montana and the fees charged by the selected states is like comparing apples to oranges. In Montana, the W&M program is funded 100% by device registration fees; no general fund monies are used. In the surrounding states named, a large part of their programs include general funding. In Idaho, device fees provide 1/3 of the program funding, while general funds account for 2/3 of the Idaho program's funding. Extrapolating Idaho's $5.00 per retail device fee out to 100% of program cost would result in a fee of $15.00 per meter, which is very comparable to what Montana charges. Information from the state of Idaho indicates that a proposed $5.00 per retail meter fee increase will be presented at the next legislature to bring their fees more in line with their expenses. Information from Oregon indicates that based on test time, equipment costs, and travel expenses, the Oregon program is just breaking even at its current $30.00 per retail meter fee level.

Concerning inspection frequency, Montana is statutorily required to license every device once a year. Some of the surrounding states do inspect and test on a less frequent basis; however, that rate is based more on staff size and inadequate funding rather than the premise that inspecting devices every two or three years is adequate. Washington, for example, has a goal of an inspection frequency of 28 months, but their current average inspection frequency for retail meters is over 36 months. Montana's fee structure and inspection frequency rate are very comparable to programs of other states that are also fully funded by fees and consistently report a high level of compliance.

COMMENT 4: Several commenters suggested the bureau cut costs and control operating expenses instead of increasing the fees.

RESPONSE 4: The department responded that the bureau continually strives to control operating costs. The bureau now has two less employees than it did in 1989, yet the bureau tests and inspects more devices now than it did then. Expenditures for equipment have been kept to a minimum and while the bureau had to purchase some new equipment to handle the increased workload, provers that were originally built or bought in the 1950s are still in use. The majority of the 56% operating expense increase over the last ten years or 5.6% per year is directly attributable to cost increases the bureau has no control over such as fuel, lodging, per diem, etc. These expenses include gasoline, which was less than $1.25 a gallon five years ago, but has very recently been about $3.00 a gallon, and the state rate for motel rooms which was $35.00 a night five years ago, but is now at least $60.00 a night.

COMMENT 5: A few comments were made regarding matters unrelated to the proposed rule amendments, such as the Montana approval of North Dakota truck meters and high costs of credit card companies and customer drive-offs.

RESPONSE 5: The department finds that these comments deal with concerns outside the purview of the proposed rule notice and are beyond the scope of the department's rulemaking authority.

COMMENT 6: A commenter expressed concern over the competitiveness and slim profit margins in the retail fuel market and that passing along this increase will drive the price of fuel higher.

RESPONSE 6: The department recognizes that with the addition of large box stores selling gasoline and some retail establishments relying more on gambling machines to increase their profit margins, the industry has shifted from local service stations selling gasoline, automobile accessories, and service toward a more diversified industry. However, this fee increase is applied uniformly to all meters regardless of the type of business structure and should not impact one type of retail establishment any more than another.

COMMENT 7: Several commenters opposed the increase in fees, stating that the amount of increase is too great.

RESPONSE 7: The department notes that it has been six years since a fee increase was last enacted, which amounts to less than 5% per year and is slightly less than the bureau's operating increase of 5.6% per year. For an average station having 20 meters, the proposed increase will amount to $100.00 per year. If expressed as dollars per gallon for a retail outlet that averages 800,000 gallons per year, this comes to .000125 dollars per gallon that would be passed on to recoup the expenses. The department asserts that this is not a significant increase in light of today's gasoline prices and is necessary to keep fees commensurate with costs.

4. The board has amended ARM 24.351.215 exactly as proposed.

DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER	/s/ KEITH KELLY
Mark Cadwallader	Keith Kelly, Commissioner
Alternate Rule Reviewer	DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 16, 2006